IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6345 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MODERN PETROFILS

Versus

A K SHAH

Appearance:

1. Criminal Misc.Application No. 6345 of 1996

MR KM PATEL for Petitioner No. 1-2

NANAVATI ASSOCIATES for Petitioner No. 1-2

NOTICE SERVED for Respondent No. 1

MR MA BUKHARI APP for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 10/10/2002

ORAL JUDGEMENT

By this petition under Section 482 of the Criminal Procedure Code the petitioners who are original accused in Criminal Case No.3930 of 1995, pending in the Court of learned Judicial Magistrate, First Class at Karjan, Vadodara, have prayed for quashing of the complaint and the process issued thereon mainly on the ground of limitation. The original complaint alleged offences under the Contract Labour (Regulation and Abolition) Act, 1970 wherein, under the provisions of Section 27, the limitation for prosecution is prescribed. Admittedly, the offence as alleged against the petitioners had come to the knowledge of the inspector / complainant on 12th August 1995 and the complaint was filed on 23.11.1995. The period prescribed for filing of the complaint is three months and by virtue of the proviso the complaint may be made within six months where the offence consisted of disobeying a written order made by an inspector. It was contended on the basis of the affidavit-in-reply filed by the original complainant that an inspection note was prepared and served upon the supervisor of the petitioner-company on the same day, that is, on 12.8.1995, and the signature was also obtained thereon. The learned APP was, however, at a loss to show any written order, if any, was contained in that note. The learned APP also could not show any provision or precedent to suggest that the time consumed in obtaining the necessary sanction for filing of the complaint could be deducted from the period of limitation. Therefore, the complaint was bound to fail only on the ground of limitation.

2 It is highly regrettable that the prosecution under the provisions of a labour welfare legislation would fail on account of negligence or ignorance of an officer who is supposed to enforce the provisions of that legislation. However, in the facts and circumstances of this case the prosecution of the petitioner cannot serve any purpose in view of the express ban on taking cognizance of an offence punishable under the Act unless the complaint thereof is made within the prescribed period of limitation. Hence, the petition is allowed and the complaint in Criminal Case No.3930 of 1995 pending in the Court of the learned Judicial Magistrate, First Class at Karjan, Baroda, is quashed. Rule is accordingly made absolute with no order as to costs.

(D.H.Waghela, J.)
(mohd)